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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELIOT SCOTT GRIZZLE,

Petitioner,

v.

ROBERT HOREL,

Respondent.

Case No. C 07-4845 SI

**NOTICE OF MOTION AND
MOTION FOR DISCOVERY**

PLEASE TAKE NOTICE that petitioner, Eliot Scott Grizzle, will ask the Court to enter an order granting the motion listed below.

MOTION

Petitioner, Eliot Scott Grizzle, pursuant to the United States Constitution, and all other applicable statutes, case law and rules, hereby moves the Court for an order allowing him to conduct discovery.

This motion is based upon the instant motion and notice of motion, the attached statement of facts and memorandum of points and authorities, and any and all other materials that may come to the Court's attention at the time of the hearing on this motion.

Respectfully submitted,

Dated: January 15, 2008
s/Benjamin L. Coleman, Ethan A. Balogh
COLEMAN & BALOGH LLP
BENJAMIN L. COLEMAN
ETHAN A. BALOGH

Attorneys for Mr. Grizzle

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**STATEMENT OF FACTS AND
 MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT
 OF PETITIONER'S MOTION**

PRELIMINARY STATEMENT

Petitioner, Eliot Scott Grizzle, respectfully submits the following memorandum in support of his requests for discovery. Mr. Grizzle requests that his simultaneously filed memorandum of law in support of his petition for a writ of habeas corpus be incorporated by reference.

ARGUMENT

Under the Federal Rules Governing § 2254 Cases, Rule 6(a) ("Habeas Rule 6"), discovery is available to habeas petitioners at the direction of the Court for good cause shown. *See Jones v. Wood*, 114 F.3d 1002 (9th Cir. 1997) (granting motion for discovery where necessary to fully develop prejudice prong of ineffective assistance of counsel claim); *see also Harris v. Nelson*, 394 U.S. 286, 300 (1996) ("[W]here specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty

1 of the court to provide the necessary facilities and procedures for an adequate inquiry.”); *Bracy v. Gramley*,
2 520 U.S. 899 (1997). Habeas Rule 6 allows a petitioner to invoke any of the discovery processes available
3 under the Federal Rules of Civil Procedure. Accordingly, Mr. Grizzle makes the following discovery
4 requests.

5 **A. Documents And Recordings**

6 Mr. Grizzle seeks the following documents and recordings. First, Mr. Grizzle requests that
7 the state be ordered to produce the prison housing logs for Brian Healy and Frederick Clark. By prison
8 housing logs, Mr. Grizzle seeks to obtain whatever prison records document in what prison and in what cell
9 Healy and Clark were incarcerated throughout their prison careers. As set forth in Mr. Grizzle’s memorandum
10 of law, it is clear that either Healy or Clark committed perjury at the trial regarding their relationship. Clark
11 testified that they had known each other for years in various prisons and had been housed in neighboring cells.
12 Healy testified that he never had even seen Clark. The prison housing logs will establish which one
13 committed perjury.

14 Second, Clark apparently gave a tape-recorded interview to investigator Rogers before Fallman
15 conducted his videotaped interview. Mr. Grizzle requests that the state produce the tape-recorded interview
16 of Clark.

17 Third, Mr. Grizzle requests that the state produce all prosecution files in this case for an in
18 camera inspection. What the prosecution knew and investigated regarding the suspected perjury of Clark and
19 Healy is highly relevant to the instant petition.

20 **B. Depositions**

21 Mr. Grizzle requests that the Court allow the depositions of the following witnesses. First, Mr.
22 Grizzle seeks the deposition of attorney Paul Gallegos. Mr. Gallegos initially represented Mr. Grizzle in the
23 trial court. Clark maintains that Mr. Gallegos, acting for Mr. Grizzle, arranged for Clark to commit perjury
24 at the trial of Mr. Grizzle’s codefendant. Mr. Gallegos has been the District Attorney for Humboldt County
25 and will undoubtedly establish that Clark’s allegation is a lie.

26 Second, Mr. Grizzle seeks the deposition of the trial prosecutor, James Fallman. Mr. Grizzle
27 has maintained that Fallman and the prosecution knowingly, or at least recklessly and negligently, presented
28 the perjured testimony of Clark and Healy. Fallman’s testimony is highly relevant to this claim.

1 Finally, Mr. Grizzle requests that he be allowed to supplement this discovery request as
2 discovery is produced, and the state's response to his petition is filed.

3 Respectfully submitted,

4
5 Dated: January 15, 2008

s/Benjamin L. Coleman, Ethan A. Balogh
COLEMAN & BALOGH LLP
BENJAMIN L. COLEMAN
ETHAN A. BALOGH
Attorneys for Mr. Grizzle

PROOF OF SERVICE

I, the undersigned, say:

1) That I am over eighteen years of age, a resident of the County of San Diego, State of California, and not a party in the within action;

2) That my business address is 1350 Columbia Street, Suite 600, San Diego, California, 92101;

3) That on January 15, 2008, I served a copy of the attached Motion on counsel for respondent by e-mailing a copy to Jill.Thayer@doj.ca.gov. A hard copy is also being forwarded via U.S. Mail to Jill M. Thayer, Deputy Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

I certify under penalty of perjury that the foregoing is true and correct. Executed on January 15, 2008, at San Diego, California.

s/Benjamin L. Coleman
BENJAMIN L. COLEMAN